

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~628~~ 295.

FRANK R. MOORE, AS UNITED STATES COLLECTOR OF
INTERNAL REVENUE, FIRST DISTRICT, STATE OF
NEW YORK, PLAINTIFF IN ERROR,

vs.

MAX RUCKGABER, SR., AS SOLE EXECUTOR OF THE
LAST WILL AND TESTAMENT OF LOUISA AUGUSTA
RIPLEY-PINEDE, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

FILED APRIL 9, 1901.

(19113.)

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INDEX.

	Original.	Print.
Certificate of the United States circuit court of appeals for the second circuit.....	1	1
Statement of facts	1	1
Questions certified.....	6	4
Clerk's certificate	8	4

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1 United States circuit court of appeals for the second circuit.

FRANK R. MOORE, AS UNITED STATES COLLECTOR of internal revenue, first district, State of New York, defendant below and plaintiff in error, <i>against</i> MAX RUCKGABER, SR., AS SOLE EXECUTOR OF THE last will and testament of Louisa Augusta Ripley- Pinede, deceased, plaintiff below and defendant in error.	}
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*Error to the circuit court of the United States for the eastern district of
New York.*

This cause coming on for final hearing before this court, certain questions of law arose, concerning which this court desires the instructions of the Supreme Court of the United States for its proper decision.

The facts out of which the questions arose are as follows:

This is a writ of error from this court to the circuit court of the United States for the eastern district of New York by the defendant below, [Frank R. Moore, the United States collector of internal revenue in the first district of the State of New York, to review a judgment overruling his demurrer to the complaint in an action brought by Max Ruckgaber, sr., as sole executor of the last will and testament of Louisa Augusta Ripley-Pinede, deceased, to recover the sum of fifteen hundred and fifty-one dollars and thirty-six cents, the amount of the tax assessed and charged on the legacy passing by the will of said Louisa Augusta Ripley-Pinede, deceased, to her daughter, Carmela von Groll, under the alleged authority of sections 29, 30, and 31 of the
2 act of Congress of June 13th, 1898, known as the "war-revenue act" and entitled "An act to provide ways and means to meet war expenditures and for other purposes."

The plaintiff in error at all the times herein mentioned was and still is the United States collector of internal revenue for the first district of the State of New York, and resides in the eastern district of New York.

The defendant in error at all the times herein mentioned resided and still resides in the borough of Brooklyn, in the county of Kings, in the city and State of New York, in the eastern district of New York, and in the first internal-revenue district of the State of New York.

The said testatrix, Louisa Augusta Ripley-Pinede, was at the time of her death a non-resident of the United States of America, being then, and having been for at least eight years immediately preceding that time, domiciled in and a permanent resident of the Republic of France. And on the 25th day of September, 1898, the said testatrix, Louisa Augusta Ripley-Pinede, died at Zurich, in the Republic of Switzerland, leaving a last will and testament wherein and whereby she did nominate as executors thereof her daughter, Carmela von Groll, one Whitelaw Reid, one Charles Allen, and the defendant in error. After the death of said testatrix and on or about the 17th day of February, 1899, the said will was duly admitted to probate by the surrogate's court of Kings County, in the State of New York. And on the same day the said daughter, said Whitelaw Reid, and the said Charles Allen, having renounced in due

form of law their respective appointments as executors, and the defendant in error having duly qualified according to law, letters testamentary under the said will and testament were duly issued out of said surrogate's court to the defendant in error as sole executor, and he is now such

3 executor. The said will of said Louisa Augusta Ripley-Pinede is dated the 6th day of November, 1890, and was made in the city, county, and State of New York, while the said testatrix was sojourning therein, where the two witnesses to the will, as well as the executor who qualified, then resided, and where said executor still resides. The will is executed according to the laws of the State of New York. The clauses of the will material to the subject-matter read as follows:

"I, Louisa Augusta Ripley-Pinede, nee Horner, widow of A. Alphonse Pinede, at present sojourning in the city, county, and State of New York, hereby make this my last will and testament; that is to say, I give and bequeath all the personal property of every kind in the United States of America which may belong to me at the time of my death to my daughter, Carmela von Groll, wife of Lieut. Col. Max von Groll, at present residing at Uhm, in Wurtemberg, Germany. * * * I hereby nominate, constitute, and appoint my said daughter, Carmela von Groll, Hon. Whitelaw Reid, Hon. Charles Allen, of Boston, Mass., and Max Ruckgaber, sr., of the city of Brooklyn, to be the executors of this my last will and testament. * * * In witness whereof I have hereunto set my hand and seal this sixth day of November, in the year one thousand eight hundred and ninety.

"LOUISA AUGUSTA RIPLEY-PINEDE.

"The foregoing instrument was subscribed by the above-named testatrix, Louisa Augusta Ripley-Pinede, in our presence, and at the same time declared by her to each of us to be her last will and testament, whereupon we, at her request, in her presence and in the presence of each other, have subscribed our names hereto as witnesses, writing opposite our names our respective places of residence, this sixth day of November, in the year one thousand eight hundred and ninety.

"GORDON L. FORD, 97 Clark St., Brooklyn, New York.

"RUDOLF DULON, 569 Mott Ave., New York City."

At the time of her death the testatrix owned a claim in account current against one Carl Goepel and one Max Ruckgaber, jr., constituting the firm of Schulz & Ruckgaber, both of whom resided in the county of Kings and State of New York. She was also the owner of a share of stock in the Tribune Association, a New York corporation. The testatrix was also the owner of bonds and coupons of divers American corporations hereinafter particularly described. Said chose in action, stock, bonds, and certificate constituted all the personal property of every kind

4 in the United States of America referred to in the said will. The value of the said property of the testatrix at the date of her death, September 25th, 1898, as fixed and determined by appraisers duly appointed, was one hundred and five thousand six hundred and seventy dollars and seventy cents. The amount of the debts of the testatrix, the executor's commissions, and general expenses of administration amounted to two thousand two hundred and forty-six dollars and seventy cents, leaving a balance passing to the sole legatee under the will of one hundred

and three thousand four hundred and twenty-four dollars. This was all of the property disposed of by the will.

On or about the 15th day of June, 1899, upon the written demand of the said collector of internal revenue, and under protest, the executor did make and render in duplicate to the said collector a schedule, list, or statement or legacy, return of legacies, and distributive shares arising from personal property of every kind whatsoever, being in charge or trust of said Max Ruckgaber, sr., as such executor, passing from Louisa Augusta Ripley-Pinede to her said daughter by her will, as aforesaid. Her said daughter, Carmela von Groll, the sole legatee, is and was at the time of her death, a nonresident, being domiciled in Germany. The personal property thus passing under the will of said testatrix was valued as follows:

Bonds and coupons of divers American corporations, valued at	\$90,134.27
1 share of stock of the Tribune Association, a New York corporation, valued at	7,500.00
An indebtedness from the firm of Schulz & Ruckgaber, of New York City	8,036.43
	<hr/> \$105,670.70

from which was deducted the expenses and commissions of administration, etc., leaving the amount of the legacy to the daughter one hundred and three thousand four hundred and twenty-four dollars. All

5 of these bonds, coupons, and stock certificate came into the possession of the said Executor Ruckgaber, and the claim against the firm of Schulz & Ruckgaber was collected by him. On the statement, list, or schedule so rendered by the executor, the defendant in error, the tax was charged against him by the Commissioner of Internal Revenue under the alleged authority of sections 29, 30, and 31 of the said act of Congress of 1898, hereinbefore mentioned, known as the war-revenue act, and by threat of distress and penalty from said collector the said executor was compelled to pay and did pay under protest to the said collector the amount of said tax, to wit, the sum of fifteen hundred and fifty-one dollars and thirty-six cents. Thereafter the said executor and defendant in error duly applied to the Commissioner of Internal Revenue to have the amount of said tax so paid refunded to him; but more than six months expired without any action by the said commissioner on the application for refund, whereupon the action was brought to recover the tax. The executor's protest and claim to recover the amount of the tax paid by him are based on three grounds:

First. Upon the supposed unconstitutionality of the act, which has been disposed of adversely to the executor by the decision of the Supreme court of the United States in the case of Knowlton vs. Moore, 178 U. S., 41, since the commencement of this action.

Second. Because the said Louisa Augusta Ripley-Pinede was at the time of her death not a resident nor domiciled in the United States, but was a resident and domiciled in France; and Carmela von Groll, her sole legatee, is not resident nor domiciled in the United States, but is resident and domiciled in Germany, and that the personal property of

the said decedent passing to said legatee under said will is not taxable under said act for the reason that sections 29 and 30 thereof were not applicable to the estates of decedents not domiciled nor resident in the United States.

Third. That if it should be held that the sections of said act were constitutional and applicable to estates of decedents residing and domiciled without the United States, then the said amount should be refunded, because the legacy in the charge or trust of the defendant in error, the said executor, belongs to a person not domiciled nor residing in the United States, and consists of the assets above set forth.

And the executor contends as to each of the said three classes of assets separately that it is not property within the United States subject to taxation, but has its situs at the domicile of the owner.

The complaint does not disclose when the domicile of the testatrix in France commenced, except as aforesaid.

The said questions of law which arose out of the foregoing facts are as follows:

1. Can the said personal property of the nonresident testatrix, Louisa Augusta Ripley-Pinede, actually located within the United States at the time of her death, September 25th, 1898, be deemed to have a situs in the United States for the purpose of levying a tax or duty upon the transmission or receipt thereof under sections 29, 30, and 31 of the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13th, 1898?

2. Was the transmission or receipt of the said personal property of the nonresident testatrix, Louisa Augusta Ripley-Pinede, which was actually located in the United States at the time of her death, September 25th, 1898, subject to taxation under sections 29, 30, and 31 of the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13th, 1898?

In accordance with the provisions of section 6 of the act of Congress of March 3, 1891, entitled "An act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," the foregoing questions of law are by the circuit court of appeals for the second circuit certified to the Supreme Court of the United States; and

It is ordered that the clerk transmit the foregoing certificate under the seal of this court to the clerk of the Supreme Court of the United States at the city of Washington.

Dated April 5th, 1901.

WM. J. WALLACE,
E. HENRY LACOMBE,
N. SHIPMAN,

*Judges of the United States Circuit Court
of Appeals for the Second Circuit.*

UNITED STATES OF AMERICA, SECOND CIRCUIT, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled Frank R. Moore, U. S. collector of internal revenue,

against Max Ruckgaber, sr., was duly filed and entered of record in my office by order of said court on the 5th day of April, 1901, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Dated New York, April 5th, 1901.

[SEAL.]

WM. PARKIN,

*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

9 (Indorsed:) United States circuit court of appeals, second circuit. Frank R. Moore v. Max Ruckgaber. Certificate. United States circuit court of appeals, second circuit. Filed Apr. 5, 1901. William Parkin, clerk. Office Supreme Court of U. S. Received Apr. 9, 1901.

(Indorsement on cover:) Certificate. File No. 18113, U. S. C. C. of appeals, 2nd circuit, term No. 628. Frank R. Moore, as United States collector of internal revenue, first district of New York, plaintiff in error, vs. Max Ruckgaber, sr., as sole executor of the last will and testament of Louisa Augusta Ripley-Pinede, deceased. Filed April 9th, 1901.